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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS**

PAUL MURPHY,

Plaintiff,

v.

Anthony Iglecias Macaranas, in his official
capacity as Commissioner of the Department
of Public Safety of the Northern Mariana
Islands

Defendant.

Civil Action No. 1:24-CV-00017

**DEFENDANT’S REPLY TO
PLAINTIFF’S OPPOSITION TO
DEFENDANT’S MOTION TO
DISMISS**

Anthony Macaranas in his official capacity as the Commissioner of the NMI Department of Public Safety (“DPS”) by and through his attorney of record, Chief Solicitor, J. Robert Glass, Jr., hereby files this Reply to Plaintiff’s Opposition to Defendant’s Motion to Dismiss pursuant to Federal Rules of Civil Procedure 4 and 12 (b)(5), for improper service of the summons and complaint.

INTRODUCTION

Defendant filed a renewed Motion to Dismiss on February 26, 2025 requesting the Court to adopt the position that suits against government officials in their official capacity require service pursuant to Federal Rule of Civil Procedure 4(j). Based on Federal Rule of Civil procedure 4(j), Plaintiff failed to properly serve process and the case should be dismissed or the Court should grant Plaintiff another extension of time to serve. (ECF 14). On March 11, 2025, Plaintiff filed a Memorandum in Opposition to Defendant’s Motion to Dismiss, in which he concedes that he failed

1 to complete service of process under the Federal Rule of Civil Procedure 4(j), and concedes that 6
 2 CMC § 2222 no longer exists and thus the Court cannot grant the relief sought. (ECF 15). He
 3 attached to the Memorandum the Summons that was served on the Office of the Attorney General
 4 on March 6, 2025.

5 Defendant now timely files this Reply to Plaintiff's Memorandum in Opposition to
 6 Defendant's Motion to Dismiss. Defendant argues that Plaintiff concedes the issues and still has
 7 not properly served the Defendant in accordance with Federal Rule of Civil Procedure 4(j), which
 8 should control in this case. Further, even the most recent attempts at service have been incomplete
 9 as they were served by the Plaintiff himself.

10 **RESPONSES TO PLAINTIFF'S ARGUMENTS**

11 **I. Plaintiff has failed to effectuate proper service under Rule 4(j).**

12 Plaintiff has admittedly not effectuated proper service under Rule 4(j). *See* ECF 15 at 2.
 13 Plaintiff attempted to perfect service by serving the Office of the Attorney General. In support of
 14 his efforts to properly effect service, Plaintiff relies on his attached summons. ECF 15-1. However,
 15 even this evidence does not show proper service as Plaintiff himself served the Summons and
 16 Complaint on the Office of the Attorney General. *See* Affidavit of Antonio Deleon Guerrero.

17 Federal Rule of Civil Procedure 4(c)(2) describes who can serve process: "[a]ny person
 18 who is at least 18 years old and not a party may serve a summons and complaint." Mr. Murphy is
 19 the Plaintiff in this case and therefore a party and ineligible to be the one to perform service of the
 20 Summons and Complaint. *See Benny v. Pipes*, 799 F.2d 489 (9th Cir. 1986) (fellow prisoners, but
 21 not plaintiff himself could effectuate service on prison guards); *accord Cash v. Equifax*
 22 *Information Services, LLC*, No. 2:23-CV-10803-BS-AS, 2024 WL 416367, at *1 (C.D. Cal. Feb.
 23 2, 2024) (citing *Reading v. United States*, 506 F.Supp.2d 13, 19 (D.D.C. 2007) for proposition that
 24 a party to the suit is prohibited from serving summons and complaint under Rule 4(c)).

25 Thus, the Court lacks jurisdiction over Defendant because he has not been properly served
 26 pursuant to Rule 4(j) as the Office of the Attorney General has not been properly served.

27 **II. Plaintiff Concedes that 6 CMC § 2222 was Repealed.**

28 Since Plaintiff concedes that 6 CMC § 2222 no longer exists and therefore the Court
 cannot grant relief, Defendant requests that the Court dismiss this claim with prejudice.

CONCLUSION

For the reasons above, Defendant requests for this Court to hold that suits brought against official capacity defendants are required to follow Rule 4(c)(2) and Rule 4(j) and require Plaintiff to serve in accordance with such Rules. As Plaintiff has not effectuated proper service, the Court should either grant one more extension for Plaintiff or dismiss the case. The Court should also dismiss any claims regarding the constitutionality of 6 CMC § 2222 with prejudice as such statute no longer exists.

Respectfully Submitted,

March 18, 2025

CNMI OFFICE OF THE ATTORNEY GENERAL
EDWARD MANIBUSAN, ATTORNEY GENERAL

By: /s/ J. Robert Glass, Jr.

J. Robert Glass, Jr., Bar No. F0523
Chief Solicitor

Office of the Attorney General
Commonwealth of the Northern Mariana Islands
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